

**OCT 19 2005**

**NOT FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSEPH EUGENE IRVING,

Defendant - Appellant.

No. 02-30155

D.C. No. CR-01-00393-BJR

MEMORANDUM\*

Appeal from the United States District Court  
for the Western District of Washington  
Barbara Jacobs Rothstein, District Judge, Presiding

Submitted October 11, 2005\*\*

Before: T.G. NELSON, WARDLAW, and TALLMAN, Circuit Judges.

Joseph Eugene Irving appeals from his guilty-plea conviction and 41-month sentence for bank fraud, in violation of 18 U.S.C. § 1344.

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), counsel for Irving has filed a brief stating there are no grounds for relief, and a motion to withdraw as counsel of record. Irving has not filed a pro se supplemental brief.

We have conducted an independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 83 (1988). We affirm the conviction. We remand the sentence for further proceedings consistent with *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc).

Counsel's motion to withdraw as counsel on appeal is denied.

The conviction is **AFFIRMED**, and the sentence is **REMANDED**.